1 2 3 4 5 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 6 AT TACOMA 7 KIMBERLY BROOKE GRAY, CASE NO. C18-5464 BHS 8 Petitioner, ORDER EXTENDING DEADLINE 9 v. TO RESPOND TO PETITIONER'S 28 U.S.C. § 2255 MOTION AND 10 UNITED STATES OF AMERICA, RENOTING MOTION ON ATTORNEY-CLIENT PRIVILEGE 11 Respondent. 12 13 This matter comes before the Court on Respondent the United States of America's 14 emergency motion regarding waiver of attorney-client privilege and request for an extension of time to respond to Petitioner's 28 U.S.C. § 2255 motion. Dkt. 5. The Court 15 16 has considered the pleadings filed in support of the motion and the remainder of the file 17 and hereby (1) grants the request for an extension of the government's deadline to 18 respond and (2) renotes the government's motion regarding the waiver of attorney-client 19 privilege. 20 It is well-established that a "defendant impliedly waives his attorney-client 21 privilege the moment he files a habeas petition alleging ineffective assistance of 22 counsel." Lambright v. Ryan, 698 F.3d 808, 818 (9th Cir. 2012). Nonetheless, "such

waiver is narrow and does not extend beyond the adjudication of the ineffectiveness 2 3 4 5 6

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claim in the federal habeas proceeding." *Id.*, 698 F.3d at 818. Accordingly, while the government is likely to succeed in its motion regarding the waiver of attorney-client privilege, it would be improper for the Court to consider such a motion on an emergency basis without affording Petitioner the opportunity to respond to the scope of the government's requested discovery. The motion will be renoted and Petitioner will be given an opportunity to respond.

It is apparent from the Government's motion that an extension of the deadline for its response to Petitioner's § 2255 motion is necessary. Petitioner's former counsel, upon whose representation Petitioner's § 2255 motion is predicated, has declined to speak with the government absent the entry of an order from the court regarding the waiver of attorney-client privilege and directing him to do so. As the deadline for a response has nearly arrived, the deadline must be extended if the government is to be afforded an adequate opportunity to respond with supporting discovery.

Therefore, the government's request for relief from a deadline is **GRANTED**. The government shall file its response to Petitioner's 28 U.S.C. § 2255 motion no later than August 31, 2018. Any reply by Petitioner shall be filed and served on or before September 14, 2018. The Clerk shall **RENOTE** Petitioner's 28 U.S.C. § 2255 motion (Dkt. 1) for consideration on September 14, 2018.

The Court **RESERVES RULING** on the government's motion regarding the waiver of attorney-client privilege. Plaintiff may file a response to the motion no later

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than July 25, 2018. The Clerk shall **RENOTE** the motion (Dkt. 5) for consideration on July 27, 2018. IT IS SO ORDERED. Dated this 12th day of July, 2018. United States District Judge